

UTILITY CONSUMER PARTICIPATION BOARD

August 25, 2010

MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, August 25, 2010 in the Ottawa Building, 4th Floor Training Room, Lansing, Michigan.

Call to Order

Chairman Alexander Isaac called the meeting to order at 9:03 a.m. Board members present: Alexander Isaac; Harry Trebing (telephonically); Marc Shulman. Members absent: Sister Monica Kostielney. Others present: Michelle Wilsey, Board Assistant; Chris Bzdok, Michigan Environmental Council; James Clift, Michigan Environmental Council; David Shaltz, Residential Ratepayer Consortium; Don Keskey, Public Interest Research Group in Michigan and Michigan Community Action Agency Association; Mike Shalley, Michigan Community Action Agency Association; John Liskey, Citizens Against Rate Excess; James Ault, Michigan Electric & Gas Association; Heather Torres, DELEG; LeAnn Droste, DELEG.

Consent Agenda

Shulman moved, second by Trebing and motion carried to approve the consent agenda as presented.

New Business

1. 2011 Contracts/Grants

Administrative Support Contract

Shulman moved, second by Trebing and motion carried to approve one-year extension of administrative contract with Michelle Wilsey effective October 1, 2010-September 30, 2011.

Isaac announced the order of grant proposal presentation would be RRC, CARE, MCAAA and MEC. He asked that presentations not exceed eight minutes. Introduction of all those present in the room were made. Isaac noted that there was not a representative from the Attorney General's office. He asked if any communication had been received from their office in regard to grant applications. Wilsey reported that she had spoken with Mike Moody prior to the meeting and proposals were briefly discussed. He did not indicate whether he was planning to attend the meeting. She would share his comments as she recalled them when the proposals were discussed. Shulman asked if there was a representative from CARE in attendance. No one was present at that time. Wilsey confirmed that CARE was given notice of the rescheduled meeting.

RRC 2011 Grant Presentation

Isaac called for the Residential Ratepayer Consortium's presentation of their 2011 UCRF grant proposal. David Shaltz distributed a handout summarizing key points of their grant request. He described the membership and constituencies of RRC. He highlighted the budgets and focus of the cases for which the RRC was seeking grant funding. The proposal provides for intervention in the gas cost recovery plan cases and the gas cost reconciliation cases of Michigan's four largest gas distribution utilities. The budgets are basically the same budgets as that requested last year. There are no increases in attorney-

hour or expert-hour fees. These cases remain important because 95 percent of the gas utility customers in Michigan are served by these companies, and approximately 70 to 80 percent of the costs on a residential customer's bill are affected by the GCR rates set in these proceedings. He briefly discussed what they anticipate will be the most important issues. The most significant issue in the gas cases is the Commission's adoption of fixed-price purchasing guidelines for these utilities. Four to five years ago when we had a lot of volatility in the natural gas markets, there was concern that GCR factors were spiking and that customers needed more price stability. As a result, the Commission started adopting fixed-price purchasing guidelines that would allow utilities to make forward purchases in an effort to bring stability to the gas cost rates.

As time has gone on, we've seen, however, that this approach to gas purchasing, while achieving some stability, has been at a very steep price to the GCR customers. Over the past four years of these four companies, we think that the cost of this program has exceeded \$1.8 billion to the GCR customers. In this current GCR year, what it amounts to is the customer is paying about a 40-percent premium on their GCR factor to secure price stability. We think that's unreasonable, and we think we need to turn this around as quickly as possible.

So we think a big focus of our activity in all these cases will be not only on a going-forward basis examining how to change these practices to get cost savings for the GCR customers, but in the reconciliation cases, really examining whether the utilities have done anything to mitigate gas costs knowing that these purchasing practices are causing such high GCR factors.

One of the side issues that's affecting the smaller companies, SEMCO and MGU, is because GCR factors set by these companies are so high, more and more customers are leaving for what's called the Gas Customer Choice Program. What that does, it leaves the remaining customers with a larger share of the fixed costs of the system and is driving up costs for GCR customers that way. So we need to address that problem, also, perhaps with some rate design in the GCR process that assigns more of the fixed costs of the system to customers who are leaving for Gas Customer Choice.

We will also continue, as we have in the past, to monitor the generic issues that always come up in these GCR cases that are described in our grant proposal, and we will select those for advocacy if we think that there will be a significant cost impact either immediately or in the future. The importance of this fixed-price guideline issue was really brought home to me by the fact that I got an e-mail last Friday from the MPSC Staff person in charge of the GCR cases asking the parties some very poignant questions about fixed-price guidelines. That questionnaire is on the last page of the handout I've given you. And it seems that we've finally got the attention of the PSC Staff on the importance of this issue. Officially in their briefs, they basically said that this program is important to achieve price stability, and they just sort of repeat that mantra from year-to-year, but now it seems that I think they're starting to recognize that there is a real problem here that needs to be addressed.

MCAAA 2011 Grant Presentation

Isaac noted that CARE was not present so he called for the Michigan Consumer Action Agency Association's presentation of their 2011 UCRF grant proposal. Don Keskey presented the application. He explained that MCAAA proposes to intervene in the base rate or gas rate cases for both Consumers Energy and MichCon which have been both recently filed, as well as the GCR reconciliation cases, the gas cases for both of those utilities which have been filed, and also the upcoming plan cases for those gas utilities. He noted that they have been involved in these cases previously, and some of them are ongoing from the last cycle. An example of the major issues they have addressed involves the practice

of these utilities who have purchased gas during extreme price spikes. In the current reconciliation cases, both Consumers Energy and MichCon purchased far too much gas at the very height of the July 2008 price spike during the pre-Olympic period when the gas prices went up to about \$13.00 per mcf; even though their sales load had fallen, they had more gas than planned for, and the price spike, based on past experience, was obvious. By doing so, they escalated the cost of gas and robbed themselves of the opportunity to buy gas that, by October 2008, had fallen to the \$4.00 per mcf range.

Another issue that we've raised and focused on is transactions with affiliates. Both MichCon and Consumers Energy are part of a vast holding company system, and they have many affiliates that are involved in pipelines, gas production, storage or transportation services and other services, and this raises the potential for a financial abuse, cross-subsidization and other transactions. In fact, in MichCon, we opposed the roll-in of the Saginaw Bay Pipeline Company into the rate base of MichCon, which would have increased the rates for the customers by \$4 million a year and which would not have changed the services. In MichCon we also recommended a rate adjustment because of transactions between the Michigan Gathering Company, which is a MichCon affiliate with MichCon, and some accounting and transactions that we challenged because they increased the cost of gas by \$6 million that shouldn't have occurred. We have opposed various automatic adjustment clauses that the utilities are trying to incorporate in their rates and in their gas GCR cases. For example, the NYMEX clause discussed before. MichCon also proposed a new finance clause in which they wanted to add into the cost of gas on an automatic basis any increases in the financing of gas, including financing costs by its own parent company. We opposed that, and recently the ALJ sided with us recommending rejection of that clause. Another clause for lost gas was proposed. We opposed that and the Commission rejected it. Adjustment clauses will continue to be monitored.

Another problem arises between the fixed-price gas contracts and buying on a market basis. Our expert testimony recommended that the company not rob its opportunities to buy gas at the market when there's an opportunity to save costs, and that while fixed-gas purchases could be made, we recommended that that portfolio be limited to about 33 percent so that there's a balance between the concern about reliability and future access to gas and the opportunity to buy gas that's cheaper at the market.

Our activity in the base rate cases focuses on the costs that are under Act 304 through better access to discovery, and focusing on those costs where the base rate proposals would have a direct effect on the gas costs under Act 304. We do not try to get into base rate cases to challenge common equity return or other issues that are not Act 304 issues.

On the electric side, we propose intervening in the base electric cases for Detroit Edison and Consumers Energy. In fact, we did intervene in and provided substantial testimony in Consumers' ongoing electric case, U-16191, even though we had no funding yet for that case, and we focused heavily on the spent nuclear fuel issue, the recommendation that the buildup of the DOE liability of \$163 million that the ratepayers paid for and which Consumers never put into the federal trust be the subject of a trust remedy, which the Commission essentially favored in its last electric rate order but now wants a lot more information on the process for setting it up, and we provided the reasons for that and recommendations on the trust and will do so in our brief, which is due tomorrow.

We also propose continuing to focus with Consumers Energy on \$85 million in Big Rock costs which they still want to charge the electric ratepayers for. We believe there will be an upcoming attempted settlement at the federal level of their damage suit against the DOE, which essentially would be

unacceptable and far more deficient from what most other utilities in the United States have been able to attain, and essentially utilize a large portion of the DOE liability buildup that we have already paid for as the mechanism to settle with the feds, thereby depriving ratepayers of the essence of this trust remedy.

We propose to continue our opposition to the letter of credit costs. Consumers wants \$4 million a year for an annual letter of credit to guarantee that someday they would actually pay the DOE liability. This is a letter of credit which Exelon demanded in their transactions when Palisades and Big Rock were transferred. However, that \$4 million is wasted money because there is no chance that the DOE is going to take any spent nuclear fuel. They filed a motion to withdraw their license application for Yucca Mountain at the Nuclear Regulatory Commission, their alternative proposal is to leave the waste on site for 100 to 300 years. If a bank is paid \$4 million a year to guarantee that Consumers would have to pay the \$163 million, since there's no chance DOE will take the waste, there's no reason for the letter of credit. In other words, you're paying 4 million a year for something that can't happen, which is impossible. We oppose that letter of credit cost, and so far the Commission has ruled against the letter of credit. Yet, Consumers Energy is still raising it. I'd also note that Consumers Energy still wants to keep the DOE liability in its rate base even though the Commission ruled against that in the last case, and they've done so by including it in their historical test year in this case.

Now, turning to DECo, the electric issues, and with respect to both DECo and CECo on the electric side, we'd like to explore the affiliated transactions, where affiliated transactions are increasing the cost of purchased power, the cost of fuel, and the cost of other matters.

The final thing is with respect to the spent nuclear fuel relative to DECo. DECo has spent \$7 billion a year in charges to ratepayers for the SNF contract fees which now the federal government has not only breached its federal contract, it is in total default because it has now announced a program and a policy that would end Yucca, end the disposal program, and leave the waste permanently at the sites in Michigan and around the country even though they would propose we continue to pay for these SNF fees. We would propose for DECo the same treatment that we would propose for Consumers Energy, and that is that the SNF contract fees included in Act 304 PSC rates be placed into trust, into an external interest-bearing MPSC-regulated trust to protect the ratepayers with respect to this illusory contract. We would also oppose the adjustment clauses that are being added to the PSCR cases and the base rate cases for things like finance costs, lost gas, and so forth.

We have presented our budget sheets and proposals that spread these different proposals among the gas and electric cases that we would suggest and recommend that we intervene in on these issues.

Trebing noted the affiliate transaction issues are important, yet raised a question regarding whether affiliate transaction regulation can be covered under Act 304. He concurred with the proposed monitoring of automatic adjustment clauses. He questioned whether productivity offsets were used to mitigate pass-throughs. Trebing commented on the breadth of the grant proposals presented thus far and the uncertainty of determining which were the most likely or promising at this point. He suggested issuing initial grants less than the total requested and, upon review in six months, make additional grant funds available for those issues that demonstrate the most merit and potential benefit for consumers.

Keskey responded to Dr. Trebing on his specific question to him as to whether or not the issues were related to Act 304 and these adjustment clauses, and the answer is resoundingly yes. For example, in the most recent case for MichCon, we opposed the NYMEX clause; the ALJ recently issued a proposal for

decision recommending the NYMEX clause be eliminated. Now, that's the PFD, and it's now on exceptions, but that's one clause under the GCR cases, Act 304 directly, MichCon's proposal to add a clause for financing costs for acquiring gas, even though they have that reflected in their base rates in the cost of capital was directly proposed by MichCon in the GCR case, and we opposed it, and the ALJ in a recent PFD rejected MichCon's proposal. With respect to the transactions with the affiliate, Michigan Gathering Company, a MichCon affiliate, that was an issue directly raised in the MichCon GCR case, we recommended a \$6 million adjustment. With respect to the LIFO accounting issue which directly affects the gas storage issues and cost issues, gas storage is directly an Act 304 issue; and it also points out that there is a mismatch with MichCon in its LIFO accounting system and the rest of the DTE structure and with respect to any other gas utility in Michigan, none of which use LIFO, yet MichCon has switched to an operational basis for its gas GCR cases, which creates more problems, and we're suggesting that MichCon, if they want to stick with LIFO, should be required to move back to the calendar-year GCR because LIFO does not match with an operational-year basis. So that's a direct issue for an Act 304 case. Same thing with our issue on the adjustment for their imprudent purchases during the height of price spikes.

Shulman noted that the grant requests exceed the total amount of funding available so paring the requests would be necessary. He asked Keskey, "especially with regards to the non-specific, non-specified cases, what is it that you are really looking at that relates to the statutory requirement of 304 with regards to those?"

Keskey responded that they would focus on Act 304 costs, and/or remedies. For example, the transactions on affiliates and how that impacts the gas and electric costs under Act 304, it tends to increase them. With respect to these various adjustment clauses that appended to the Act 304 rates, that directly impacts the Act 304 rates. With respect to the spent nuclear fuel, those contract fees are charged quarterly under Act 304 directly, they are added to the PSCR electric bills, and the companies have also tried, like Consumers Energy, tried to allocate some of those costs to gas rate customers, which we, MCAAAA, opposed in the gas cases. So that again is a direct Act 304 cost impact. Then you might look at the remedy, for example a rate adjustment or a trust remedy. The cost arises under Act 304, so therefore that's the nexus on the remedy. And so Act 304 powers along with the general powers of the Commission give it the ability to structure remedies, for example, remedies on the spent nuclear fuel costs and what should be done to protect customers.

Shulman noted that the average cost per case of intervention in similar cases varied among grantees. He asked Keskey to discuss the reason for the differential or how they arrive at the budget they proposed.

Keskey responded that they have allocated an equal number of hours in all the cases between expert and legal though it varies. He explained that their case budgets are higher because they are very involved in the discovery process and cover several issues, many of which have not been looked at adequately before. Some of the cases and issues are going on at both the federal and state level and the research is complex.

Keskey noted that he forgot to include a budget sheet for both the base gas rate case for Consumers and MichCon, but implicitly would break it out between the GCR and the base cases. He wasn't asking for more money but wanted to be permitted to reallocate funds to those cases.

Isaac noted that he did not take questions after the RRC presentation by Shaltz and opened the floor to questions on that presentation. Shulman asked Shaltz if the Area Agencies on Aging include any agencies in the Upper Peninsula? Shaltz responded that it includes agencies from the Upper and Lower Peninsulas of Michigan. He further noted that SEMCO Gas has service territory in the Upper Peninsula.

Trebing noted that a critic of what the UCPB is doing might well say that, look, if the field price of gas has dropped from \$6 a million Btu to \$4 1/2, what are you worrying about, you know, it's not significant. He suggested that Shaltz analyze how the field price of gas has dropped and how the savings or the surplus profits have flown through to all of the participants and then how it was distributed among different classes of customers. If the retail residential prices stay high, it's clear that they are not achieving savings that might otherwise be expected by the price decline. Shaltz noted that in the last round of GCR cases, they did document the price disparity. They could however investigate the issue deeper. He noted that what they are seeking now that is different from before is an outright moratorium from the Commission on fixed-price purchasing until we can get GCR rates back in line with what's going on in the marketplace. Trebing asked what the MPSC staff position was on these issues. Shaltz responded that they've been supportive of the utilities' fixed-price purchasing programs. However, the recent questionnaire from the head of the GCR division indicates a possible rethinking of that support.

CARE 2011 Grant Presentation

Isaac called for the Citizens Against Rate Excess' presentation of their 2011 UCRF grant proposal. John Liskey apologized for the late arrival. Liskey briefly summarized results from the current year. Of the 14 cases that were granted funding, 7 have completed. He estimates their intervention saved ratepayers over \$2 million attributed to an increase in over-recovery costs as a result of their discovery questions. He noted that some would not recognize that as a savings because a consumer would get that money refunded to them in future years. Their position however, is that the money is better left in the pockets of the ratepayers and not in the bank accounts of the utility companies.

He reported that there was not much activity at the federal level until June 30th. There are two cost allocation proceedings. One is a notice of proposed rulemaking with comments due at the end of this month. The second is a cost allocation plan proposed by MISO. Both are very important for Michigan residential ratepayers. One estimate projects that over the next 20 years, Michigan ratepayers could be responsible for paying \$3.2 billion of cost allocations as a result of these proceedings.

Liskey explained that the CARE plan for 2011 is to continue to intervene in PSCR plan and reconciliation proceedings for small- and medium-size companies. Two are in the Lower Peninsula, Alpena and Indiana Michigan Power Company; and then there are four in the Upper Peninsula. He noted that Edison Saulte Electric has been sold to Cloverland, and it is no longer eligible for funding.

In regard to the diversity of costs for PSCR cases raised in a question before, he said that, in 2011's plan, they have budgeted from \$3,500 in one case for a very small to \$50,000 for Indiana Michigan Power Company. They have tried to use experience from this last year to base our projected budgets for next year.

Shulman asked what the status and intent was for the unspent funds for the FERC proceedings? Liskey responded that the current year budget for the FERC proceedings was \$140,000. He estimated they would spend approximately half and will therefore have \$71,720 unspent as of September 30th.

They have proposed continuing participation in the FERC proceedings in the new grant proposal.

Shulman asked if Liskey knew of any other organizations or State of Michigan monitoring or doing anything with regards to the FERC cases other than your organization? Liskey responded that he was not aware of any residential ratepayer-dedicated organization that is filing comments in the FERC proceedings.

Trebing asked Liskey if he knew of intervention from other states such as California, New York and Wisconsin on the points they are raising? Liskey responded that he did not know that. He focuses on the MISO region. Trebing asked about Wisconsin. Liskey said he knew the Commission was active but did not know of their specific position on the issues nor of any citizen group intervention.

Trebing further commented on the capacity market concept referenced in the proposal and urged they look into that issue in the FERC proceeding. He further suggested that when they are looking at individual utilities that they look carefully at Indiana Michigan Power's ties into the AEP grid and the structure of charges and so forth imposed on the local distribution company for participation in the grid. He expressed concern that AEP will not provide the data necessary to do a thorough analysis. Trebing asked if the Commission had done anything on the concerns about a capacity market competition? Liskey stated that he didn't believe the Commission had done anything in the last year, and that's why they had not entered into any proceeding at FERC with regards to capacity markets. It's something that continues to be monitored.

Wilsey asked if the Michigan PSC had shown interest in their intervention in the FERC proceedings? Liskey said they had been in touch informally and sharing information. He expects they will file something but is not sure what at this point.

Isaac called for the Michigan Environmental Council's presentation of their 2011 UCRF grant proposal. Chris Bzdok and James Clift provided a joint presentation. Clift thanked the board for its past support. He commented on the changes in the utility business as a result of the implementation of the Clean Energy Legislation of 2008. The rules for their entry into the fields of renewable energy are being written. They are working with partners to educate the Commission and the public on the kind of changes that are happening in this area, then using that information to protect the ratepayers from the potential of excessive cost.

Bzdok explained that they propose interventions in nine cases including the Consumers and Detroit Edison power supply plan and power supply reconciliation cases, the Consumers and Detroit Edison renewable energy plan and reconciliation cases, and a Consumers Energy optimization amendment case which was recently filed. He said that to his knowledge they are the only parties proposing to intervene in each of those nine cases using board funds.

He noted that they are requesting a total of \$257,550, approximately \$28,000 less than MEC was awarded in 2009, about 14,000 less than we requested in 2010, and about \$4,250 less than awarded in 2010. This is a reduction of approximately 10% over the past two years. He also directed the board's attention to the portion of the application outlining the public interest benefits of the proposal.

He reported that in the conventional cases, they took a suggestion arising out of one of these meetings from the board to spend some more time looking at natural gas for electric generation, specifically Consumers' Zeeland plant, which is a 900-megawatt plant that last year operated 6 percent of the time, and looking at that in comparison to some of the older coal-generated plants that Consumers has. At

the moment of dispatch, some of those older plants have slightly better costs than Zeeland, but not much better, and when you sort of factor in the ongoing capital maintenance costs of those plants, when you factor in the drop in gas prices that were referenced in this meeting earlier, when you factor in some other things, we appear to be making some headway on that issue.

They learned a couple of things in the latest rate case that was funded in part by this board about potential fast arc capability for that plant upcoming and about points where that plant could simply continue to run, which would further lower the dispatch and make that more competitive. We're interested because we think that's a cost savings to ratepayers over a longer time period and because it's a cleaner burning fuel.

In the renewable energy cases they have already had success with this board's support reducing the surcharge in the Consumers case. Further, the Commission has signaled that it expected that initial plan costs may be coming down, that surcharges may be coming down. MEC believes that reserve funds would also then need to come down. He noted recent interesting developments. In particular, PPAs that Consumers has recently proposed for approval we think are going to exert downward pressure on the cost of supplying power from renewable energy across the board. Of concern is the utilities' reservation unto themselves of doing 50 percent of this generation themselves. Not a lot of people outside of those utilities have confidence that they're going to be competitive with those prices.

MEC is also interested in intervening in the current energy optimization amendment case by Consumers. This board has supported those efforts in the past. Approval of energy optimization programs requires that the costs have to be less than the life cycle cost of supplying, transmitting and distributing the power that's saved. So again, there are potential savings there. Bzdok noted that other issues are also referenced in the application that they expect to see arise in these cases.

Shulman asked if they felt intervention in the renewable energy cases would require continuous monitoring? Bzdok said no but he does expect there will be a period of time before an equilibrium is reached. Clift added that he thinks we have probably a year or two as procedures and cost accounting is sorted out before the process normalizes.

Trebing clarified that the extension requested to continue current cases does not include any new funding. Bzdok confirmed that was the case.

In regard to the new proposals Trebing expressed concern that looking at the whole question on the adequacy of forecasting models draws on econometrics. He asked if they had access to a person with the skill to conduct such studies. He also felt that benchmarking other utilities would be cost intensive and require more resources than proposed in this application.

Bzdok responded that investing in econometric studies critiquing utility forecasts was not likely to be a good investment in the short term. The Commission has not expressed interest in determining whether the forecast itself is accurate. Bzdok said their efforts focus on simply whether it was reasonable as a matter of administrative competent evidence at the time it was filed. A similar approach is used for benchmarking. Issues and focus will be refined based on the response and direction given to those arguments.

Isaac recessed the meeting at 10:17 a.m. for a brief break. Isaac called the meeting back to order at 10:30 a.m. He explained the motions on the grants would be accepted and if the motion was supported discussion would be open to board members only.

UCRF 2011 Grant Approvals

Shulman asked to comment before motions were made. He expressed appreciation for the proposals and the work grantees had done on behalf of Michigan consumers in the past. He noted that the amount of funding requested surpassed the amount of available grant funds. He also stated that any motion he made would reflect his desire to reserve at least 10% of the funds available to provide for later needs or amendments. He felt it was good practice to have such a reserve and that it was not necessary to allocate all of the funds immediately.

Shulman moved, second by Trebing and motion carried to approve a 2011 UCRF grant to RRC in the total amount of \$191,247 for the intervention in the cases that were presented in the grant application, with the case budgets to be redistributed by the grantee and reported back to the board. Shulman noted that there was also an effort on his part to equalize the amounts granted but that specific allocations could be made based on the priorities of the grantees.

Droste requested confirmation that when budgets are reallocated that it is only for those cases listed in the proposals and not any new cases or cases from fiscal year '10 grants. Shulman responded that was correct.

Shulman moved, second by Trebing and motion carried to approve a 2011 UCRF grant to CARE in the total amount of \$209,257 for intervention in the cases presented in the grant application, with case budgets also to be redistributed by the grantee.

Shulman moved, second by Trebing and motion carried to approve a 2011 UCRF grant to MCAAA in the total amount of \$199,687 for intervention in the cases presented in the grant application with the addition of the base gas rate cases for MichCon and Consumers Energy. This approval does not include appeals, except for filing fees, with final case budgets to be redistributed by grantee.

Shulman moved, second by Trebing and motion carried to approve a 2011 UCRF grant to MEC in the total amount of \$211,897 for intervention in the cases presented in the grant application with case budgets to be redistributed by the grantee.

Trebing commented that he had worked out reductions to the initial proposals independently of Shulman and they came out very close.

Shaltz asked if new budget sheets should be submitted to both Droste and Wilsey. Shulman responded affirmatively. Shaltz asked for the deadline. Droste said they would be needed by September 15, 2010.

Wilsey noted that it appeared the total amount granted in the meeting today was \$812,088.

Trebing asked that the board consider a thorough assessment of the work midway through the year to identify successes and failures. Additional funds could be made available to those making progress of significant benefit to ratepayers.

Final 2010 UCRF Grant Amendments

Isaac asked if there were any changes or withdrawals to the MEC Amendment requests before the board? Bzdok noted that the two amendments for transfers, one was of \$20,200, the other was \$10,100, were submitted in early July in anticipation of an August 2 meeting. That meeting was cancelled and some of that work has now been done. Therefore, he amended those requests for half of their amounts. Wilsey noted that per LeAnn Droste, the request for time extensions could be handled administratively. Therefore, Bzdok withdrew the request for time extensions from consideration by the board.

Isaac asked if there were any changes to the PIRGIM budget amendment requests? Keskey responded that a package was sent to Wilsey and DELEG to inform them of expenditures to date on the PIRGIM UCRF grant 10-5. His understanding was that PIRGIM had sent the invoices and status reports to DELEG which he hoped would resolve the matter. A discussion of the status of the contract ensued. Isaac asked if a signed contract for the grant existed as of today. Keskey responded that there was a contract as the grant had been approved by the UCPB and State Administrative Board in August and September and an amendment was also approved a few months later. He said the grant contract between PIRGIM and the State had not been signed yet but that it is coming. Isaac noted that the contract year is nearly complete. Keskey argued that it was his experience that agency contracts often were signed several months after the approvals by the board. He commented that the actual receipt of the contract or amendments is followup paperwork that is filed but it does not in any way mean that the grant is not effective commencing with the board and administrative board approval. Isaac stated that he had read the emails and did not share Keskey's view. Keskey stated that there was a contract. Isaac asked if it had been signed by PIRGIM. Keskey responded that PIRGIM agreed to the application and amendment, so there was a contract.

Shulman asked Droste to confirm that DELEG hasn't received any application yet from PIRGIM as a nonprofit organization. She responded that DELEG had not received a signed grant agreement with PIRGIM for the period beginning October 1, 2009, through 9-30-2010. Shulman then asked Droste to confirm that grant eligibility is only reserved for non-nonprofit and for governmental entities. She responded yes. Keskey noted that PIRGIM is a non-profit. Shulman commented that Keskey's request for direct payment to himself was the problem. Don didn't feel based on his understanding of past experience that payments should be held up because the contract wasn't received. Keskey stated that since the contracts have been sent and the status reports have been sent for the reimbursement requests, that paperwork has been completed and there's nothing left on that issue. It's moot.

He then stated that the only amendment he is requesting is for the remaining funds that exist on the second request for \$2,495.18, which is what remains in the approved budgets, be transferred to cover the cost of filing the brief in the second phase of that U-15611, which is to support the Commission on their \$86 million issue in our favor in the Consumer appeal of the Big Rock case, which is U-15611.

Wilsey summarized her understanding of the remaining amendment items for the board to consider. Shulman asked Bzdok if the Natural Resources Defense Council was still participating on these matters? Bzdok noted they are partners in some cases and not in others. He noted the issues they are pursuing however are separate and they will not benefit from UCRF funding.

Shulman moved, second by Trebing and motion carried to approve MEC budget amendment transfer request to UCRF 10-04, and UCRF 10-03 for the total amount of \$10,100.

Shulman moved, second by Trebing and motion carried to approve MEC budget amendment transfer request UCRF 10-02 and 10-03 for amount \$5,050.

Isaac called for a motion on PIRGIM grant amendment transfer request to UCRF 10-05 in the amount of \$2,495.18. No motion was offered.

Keskey informed the board that no brief would be filed as a result of having no budget and that it may negatively affect the appeal of an \$86 million decision benefitting residential customers. He restated his arguments regarding the existence of a contract. Shulman asked Keskey if he could offer any proof of his claims that PIRGIM had signed the agreement? Wilsey asked if she could review the email correspondence for support of Keskey's claim. The board and Keskey agreed. Shulman asked Keskey if he could conference the PIRGIM official in to the board meeting to validate that the contract had been executed and sent. Keskey was not successful reaching Alison Cairo. Wilsey reported that in an email from Alison Cairo to Don Keskey dated yesterday Alison Cairo writes, "when I returned to my office today, I saw they've been bounced back here. I just put them back in the mail with the error fixed. So I believe that everything should arrive in the next couple of days. Please let me know if that is not the case. Alison." It was contained in a string of email correspondence regarding the UCRF agreements between Alison and Don.

Based on the email, Shulman moved, second by Trebing and motion carried to approve the budget transfer amendment request by PIRGIM to UCRF grant 10-05 in the total amount of \$2,495.18 from unspent funds in U-15611 and U-15645 provided, however, that the executed contract agreement is received by DELEG no later than Friday, August 27, 2010 at 4:00 p.m. eastern time.

Public Comment

Wilsey explained that Heather Torres is taking over Terri Eklund's responsibilities with the board. The board expressed appreciation for the great work done by Terri and welcomed Heather.

Droste requested that all grantees return grant agreement – within a week or two of when they are sent for signature so that the monies can be encumbered and the grant agreements implemented. She stated that at this time, monies are not encumbered for the grant with PIRGIM. If that grant agreement was not be received by 9-15, the monies would lapse. This extensive delay is a problem. This is not the way we do business, it has never been the way we do business. The office had been in continued communication with Mr. Keskey hoping that it would get resolved and not come to this late in the year. In the future, we will bring these matters to your attention upon the initial problems that we have. The communications between DELEG, Keskey and PIRGIM were discussed. Isaac requested that Droste inform the board at its next meeting and anytime thereafter if problems arise. He directed all of the grantees to make sure that obligations with regard to the grants are met.

Next meeting

A. The next regular meeting of the UCPB is scheduled Monday, October 4, 2010, 10:00 a.m.

Adjournment – Meeting adjourned at 11:24 a.m.